Filed 12/14/16 In re A.E. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re A.E., a Person Coming Under the Juvenile Court Law.	H042193 (Santa Clara County Super. Ct. No. JD15810)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. B.E., Defendant and Appellant.	

Appellant B.E. appeals from an order terminating her parental rights pursuant to Welfare and Institutions Code section 366.26.[1] On appeal, appellant's counsel filed a brief pursuant to *In re Phoenix H.* (2009) 47 Cal.4th 835 (*Phoenix H.*). After appellant made a showing of good cause, we allowed her to file a supplemental brief. In her brief, appellant fails to raise arguable issues on appeal, therefore, we will dismiss the appeal.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

FACTUAL AND PROCEDURAL BACKGROUND

On February 25, 2013, the juvenile court sustained a petition filed pursuant to section 300, subdivision (b) due to the appellant's substance abuse and domestic violence, ordered that the physical custody of A.E., a nine year old girl, be removed from appellant, ordered that A.E. be placed in out-of-home placement, and ordered reunification services. On June 26, 2013, the juvenile court sustained a subsequent petition filed pursuant to section 300, subdivisions (a), (b) and (c), and section 342, alleging that A.E. reported that the appellant had physically abused her while they were residing together.

Although the social worker commended appellant for her participation in services in an attempt to reunify with A.E., the social worker recommended termination of services at the 18 month review hearing because appellant had not processed the abuse she had inflicted on her daughter and showed little empathy for A.E.'s experience. Additionally, A.E. was very angry with appellant over the abuse, threatened to run away if she were returned to appellant, and acted out after visits with appellant. In a supplemental report the social worker changed her recommendation to continued services because appellant had made progress in accepting responsibility for the abuse inflicted on A.E., and was showing empathy for her daughter's experience. The Court Appointed Special Advocate (CASA) reported that the appellant had made incredible progress, overcoming a long-time substance abuse problem and participating in a variety of services to improve her relationship with her daughter. Conversely, the social worker's report detailed how visitation between appellant and A.E. had taken a turn for the worse. Unsupervised visits led to a series of "rocky" encounters, resulting in resumption of supervised visits. During the visits, A.E. tried to avoid contact with appellant. A.E. had been acting out in the foster home and expressing her dismay that no one seemed to understand that she no longer wanted to visit appellant. A.E.'s individual therapist reported that A.E. was adamant against reunification. Therapeutic Behavioral Services

reported that A.E. was acting out and at risk of going to a higher level of care. She had displayed some progress but threatened to return to "her old behaviors" if reunified with appellant. The family therapist reported that A.E.'s behavior towards appellant seemed to be worsening and that A.E. wanted to be adopted by the foster parents. The social worker concluded, "Should the court order reunification, . . . it appears that . . . A.E. will become more aggressive and resistant to visits, and that while A.E. has been going to the visits . . . . [S]he is not interacting with [appellant] in a positive manner."

After a contested 18-month review, the court terminated reunification services and set a hearing pursuant to section 366.26. Writ notice was given to the appellant in court. No writ petition was filed.

The report prepared for the section 366.26 hearing, filed March 19, 2015, stated that appellant had consistently visited with A.E., but that visits continued to be difficult with A.E. generally refusing to talk to appellant. A.E. was adamant that she did not want to visit appellant. She wanted to be adopted by the foster parents, who were willing to adopt her. The social worker recommended that parental rights be terminated. An addendum prepared for the February 18, 2015 hearing, stated that A.E. is healthy, smart, and adoptable, and that she was adamant that she wanted to be adopted by the foster parents. The social worker concluded that it would not be detrimental to A.E. to terminate parental rights. The CASA reported that A.E. had been in foster care for more than two years and had thrived in her current home. The CASA stated that A.E.'s relationship with appellant is forced, strained and painful, and that she had repeatedly stated that she did not wish to return to or visit appellant. The CASA stated that A.E. had a strong bond with her foster parents and was well supported emotionally by them and their extended family. The CASA believed it would be in A.E.'s best interest to have a stable, permanent home with her foster family and that it would be detrimental to A.E. to ask her to wait longer for permanency.

After a contested section 366.26 hearing, held on March 27, 2015, the juvenile court concluded that A.E. was adoptable. The court further found that although appellant had maintained regular visitation and contact with A.E., appellant had failed to meet her burden to prove that A.E. would benefit from continuing the relationship with appellant or that there is a compelling reason to choose a permanent plan other than adoption. The court agreed with appellant's argument that at 11 years old, A.E. should not have the power to dictate the permanent plan, and stated that the court considered A.E.'s wishes among many factors, and has made its own determination of the child's best interests based upon all of the evidence. The court concluded that A.E.'s best interests require that she be freed for adoption and terminated parental rights. This timely appeal ensued.

On appeal, we appointed counsel to represent appellant. Appointed counsel filed a brief pursuant to *Phoenix H., supra*, 47 Cal.4th 835, stating the case and facts, but raising no arguable issues on appeal. Pursuant to *Phoenix H.* this court notified appellant of her right to submit a request showing good cause to file a supplemental brief. On December 2, 2015, appellant sought permission to file a supplemental brief. On January 12, 2016, we granted appellant permission to personally file a brief. (*Phoenix H., supra,* 47 Cal.4th at pp. 844-845.)

DISCUSSION

In her supplemental brief, appellant contends that the juvenile court erred by considering A.E.'s connection with her foster parents at the 18-month hearing, that the trial court abused its discretion in terminating services when she was unjustly denied visitation during her incarceration and not provided with sufficient family therapy. As respondent correctly notes in the respondent's brief, these purported errors do not relate to the section 366.26 hearing order on appeal here. Instead they refer to the 18-month review hearing when reunification services were terminated and the section 366.26 hearing was set. Claims of error from the termination of services are not properly reviewed in an appeal from an order terminating parental right pursuant to

section 366.26, instead they must be raised by way of a writ petition. (§ 366.26, subd. (1)(3)(A).)

Finally, appellant claims that the juvenile court conducted the section 366.26 hearing in violation of California Rule of Court rules 5.720 and 5.708(C)(2). Specifically, appellant claims that the social worker failed to provide the report that set forth the recommendations at least 10 days before the hearing. Although the report was filed on March 19th for the March 27th hearing, appellant fails to articulate any prejudice from the two day delay. Appellant appeared and testified in support of her challenge to the contentions and recommendation in the report.

Appellant, having failed to raise any arguable issue on appeal from the order terminating parental rights pursuant to section 366.26, the appeal must be dismissed.

DISPOSITION

The appeal is dismissed.

_____
RUSHING, P.J.

WE CONCUR:

_____
PREMO, J.

_____
ELIA, J.

In re A.E.; DFCS v. B.E.
H042193